

## **REMARKS**

The Examiner-initiated Interview Summary dated January 13, 2006 has been carefully reviewed. Applicants agree with the Examiner's summary and provide the remarks below in response. In view of the amendments presented herewith and the following remarks, favorable reconsideration and allowance of this application are respectfully requested.

### **THE CLAIMS AS AMENDED ARE NOT ANTICIPATED BY US PATENT 5,583,016 TO VILLEPONTEAU**

In the previous Official Action, the Examiner rejected claim 1 asserting that it is anticipated by '016 patent to Villeponteau. Specifically, the Examiner referred to SEQ ID NO: 3 of the '016 patent. Claim 1 has been amended to recite a promoter sequence consisting of a promoter sequence of SEQ ID NO: 36 (hProm867), or a sequence having 95% homology to SEQ ID NO: 36. Inasmuch as SEQ ID NO: 3 of the '016 patent is at least 600 base pairs longer, it cannot be reasonably maintained that the invention as presently claimed is identical to that disclosed by Villeponteau.

Applicants appreciate that the term "comprising" is open language. However, attached hereto is a sequence alignment of the sequence encompassed by claim 1 and the Villeponteau sequences. As can be seen from the alignment, there are also subtle sequence differences between SEQ ID NO: 36 (hProm867 and hProm697 contained therein) and the Villeponteau sequence.

New claim 46 and dependent claims 47 through 52 have been added. It is submitted that given the sequence differences in hProm 867 and and hProm697 applicants are entitled to use open

"comprising" language. Support for the new claims can be found in the claims as originally filed.

In light of the foregoing remarks, the previously submitted sequence alignment and the present amendment, it is submitted that the present claims are novel over Villeponteau. Accordingly, any outstanding rejections have been rendered moot and should be withdrawn.

#### CONCLUSION

It is respectfully urged that the rejections set forth in the September 1, 2005 Official Action be withdrawn and that this application be passed to issue. In the event the Examiner is not persuaded as to the allowability of any claim, and it appears that any outstanding issues may be resolved through a telephone interview, the Examiner is requested to telephone the undersigned attorney at the phone number given below.

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